



Legislative Update

August 2007

FEDERAL

Social Security Number Restrictions, File Freezing, Mortgage Triggers

On July 16, the House Ways & Means Committee introduced a bill, [HR 3046](#), which would significantly restrict use of the Social Security Number (SSN) for commercial purposes, with broad rulemaking authority given to the Social Security Administration. The Committee unanimously passed the bill on July 18 despite strong lobbying against it by sectors of the business community, including TransUnion.

The Committee has asked the General Accountability Office (GAO) to study the effects of actual implementation of their bill. Specifically, the GAO is reported to be examining current practices by financial institutions and information resellers--involving the purchase or sale of SSNs--that would potentially be prohibited under HR 3046; and the extent to which other data could be used in lieu of SSNs were HR 3046 to be enacted. The Federal Trade Commission (FTC) also is conducting a similar inquiry into SSN uses, releasing [a request for comment](#) on the uses of SSN in the private sector on July 30. TransUnion is working with the Consumer Data Industry Association (CDIA) to provide input.

On June 13, the House Energy & Commerce Committee (E&C) passed similar bill restricting use of SSN, with broad rulemaking authority to the FTC. The E&C bill, [HR 948](#), like HR 3046, contains weak exceptions for consumer credit reporting — and these are subject to further dilution in the rulemaking process.

File freezing appears to be another issue of uncertain priority. The issue continues to attract some legislators, including the Chair of the Subcommittee for Financial Institutions and Consumer Credit, Carolyn Maloney (D-New York) and the Subcommittee's Ranking Member, Paul Gillmor (R-Ohio). On Aug. 2, Reps. Maloney and Gillmor introduced a file freeze bill, [HR 3316](#).

The question of whether to restrict or ban mortgage acquisition trigger services is an issue that at one time had a greater priority for Financial Services Committee (FSC) Chairman Frank than file freezing or SSN restrictions. In a March 20 statement to the National Association of Mortgage Brokers, Frank said that he would include a ban on this service as part of the FSC's data protection legislation to be introduced later in 2007. Since then, however, there has been no time given in FSC to the issue.

Congressional Hearings

On June 19, FSC Chairman Barney Frank fulfilled a long-standing promise to hold a [hearing](#) on “consumers’ ability to dispute and change inaccurate information.” Stuart Pratt, president of CDIA, testified for the consumer reporting agencies. Pratt’s [testimony](#) included the fact that over 30 percent of the industry’s resources dedicated to handling consumer disputes are tied up handling repetitive disputes from credit clinics. Pratt stressed the incomplete work of the 2003 FACT Act due to the still-unfinished rulemaking by the FTC and the banking agencies for accuracy and integrity guidelines, direct disputes to data furnishers, and red flag guidelines for identity fraud. No specific legislative proposals were made, but Chairman Frank suggested that if the agencies could not cooperate to finish the FACT Act rulemaking, he would introduce legislation to give sole authority to the FTC.

On July 31, the Senate’s Committee on Commerce, Science and Transportation held an [oversight hearing](#) on telemarketing practices and the Credit Repair Organizations Act (CROA). The announcement stated: “The Committee will examine three major consumer protection and fraud prevention issues under the jurisdiction of the Federal Trade Commission (FTC): (1) the effectiveness of the national Do-Not-Call registry and current legislative proposals to improve the Do-Not-Call Implementation Act of 2003; (2) the effectiveness of CROA and possible legislative initiatives to clarify the language of the Act; and (3) telemarketing fraud, particularly against older Americans.” Robin Holland, a senior vice president of Equifax, was among those testifying. Holland spoke in support of efforts by various Members of Congress to correct a flaw in CROA, which allows class action litigation to be filed against legitimate credit file monitoring services.

STATES

Mortgage Triggers

Minnesota Senate File 241

The Minnesota legislature enacted [SF 241](#) on May 21, which prohibits the sale or exchange to a third party, unless the third party holds an existing mortgage loan on the property, the existence of a credit inquiry arising from a consumer mortgage loan application when the sale or exchange is triggered by an inquiry made in response to an application for credit. It was to become effective August 1. A federal district court of Minnesota entered a temporary injunction against the Attorney General of the State of Minnesota to prevent enforcement of this law on July 30. CDIA is challenging the law, arguing that the measure is preempted by the FCRA. The Court found that CDIA has a very strong likelihood of prevailing on the merits of its argument that preventing sale of triggers by statute is preempted by the FCRA.

Massachusetts House Bill 4146 Amended

[HB 4146](#) is intended to prohibit mortgage triggers; however, the bill could jeopardize many vital services offered by consumer reporting agencies and financial institutions that benefit Massachusetts consumers. The bill amends the permissible purposes section of the commonwealth’s FCRA by prohibiting a CRA from “engage[ing] in or offer[ing] any service whereby the agency sells or otherwise makes available to a third party any information pertaining to a loan application a consumer has made with a bank or credit union...a mortgage lender...or [a small business lender] without consent from the consumer.” It would also require every “financial lending institution” to “provide notice to any consumer of his right to opt into any service whereby the [CRA] sells or otherwise makes available to a third party

any information pertaining to a loan application a consumer has made.” TransUnion expects further debate on this bill later in late summer.

Security Freezing

At publication date of this *Update*, 39 states plus Washington D.C. have enacted security freeze laws. A total of 103 security freeze bills were introduced in 32 states this year, with new enactments in 13 states (Arkansas, Indiana, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oregon, Tennessee, West Virginia, and Wyoming) and amendments to existing laws in four states (Hawaii, Nevada, Texas, Washington).

Massachusetts Omnibus ID Theft Bill Enacted

Massachusetts enacted [House Bill 4144](#) on Aug. 2. This omnibus bill grants rights to all state citizens to request a freeze on their consumer credit report while allowing CRAs to charge up to \$5 for a freeze, lift or removal request, sets precedent by providing freezes free to spouses of ID Theft victims. Effective date is Oct. 31,,2007.

Oregon Omnibus ID Theft Bill Enacted

Oregon enacted an omnibus bill with provisions regulating security freezes, security breaches, data disposal, and Social Security numbers on July 12. TransUnion, through its participation on an ID Theft Task Force, was also very active in shaping this legislation, which now can be seen as a model law. The freeze provisions conform to what a majority of states are already doing – opening the freeze to all in the state and allowing us to charge up to \$10 for freezing, lifting and removal except for ID Theft victims. Effective date is Oct.. 1, 2007.

Michigan, Ohio Security Freeze Bills Update

In Michigan, Senate Bill 340 would require TransUnion to develop a secondary authentication method using a consumer’s PIN of choice and to develop a process to remind consumers of their PIN. The bill limits fees to \$10 for placing a freeze and replacement of a PIN, but allows no fees for lifting or removing a freeze. Effective date would be 90 days from enactment.

In Ohio, TransUnion continues to lobby against provisions required by September 2007 in the legislation that would require extensive programming and IT programming that could only force potential errors and unsatisfied consumers.

Insurance Scoring

Delaware Insurance Scoring Bill Enacted

Delaware legislators and the Insurance Commissioner have threatened to ban insurance scoring for many years, but finally this year a compromise was met to avoid an outright ban. On August 1, SB 31 was enacted which allows scoring, but forbids insurers from refusing to underwrite a new risk or establish a premium for an applicant based solely on a consumer report or on credit information relating to an applicant, make any adverse underwriting decision with respect to the current policyholder based in any way upon changes in credit information or changes in a consumer report; or with respect to any policy currently in force, request from the policyholder or any third party any credit information or consumer report relating to the current policyholder. This enactment leaves only Pennsylvania and Vermont as states not regulating insurance scoring. The effective date is January 1, 2008.

Nevada Insurance Scoring Adverse Action Bulletin Introduced

Assembly Bill 404 of the 2007 Nevada Legislative Session amended the Nevada law governing requirements for notice of adverse action when a consumer's credit information results in an adverse action and requires that a notice of adverse action must be provided on a form approved by the Insurance Commissioner. While this is effective Oct. 1, 2007, the Commissioner recently provided a Draft Bulletin which stipulates that scoring providers provide customized response text to a consumer's reason codes. This goes beyond current capabilities and TransUnion is active in remedying this bulletin so any rulemaking from the Commissioner more closely mirrors existing law.

Florida Proposed Insurance Scoring Rule Introduced

In another attempt to ban insurance scoring in Florida, on June 12, the Insurance Commissioner introduced a proposed rule to implement the provisions a scoring bill passed in 2005. The rule would require the review and approval of an insurers use of credit reports and credit scores, requires submission of specified information and verification that the models, methods, programs and other processes are accurate predictors of risk and are in compliance with the standards that ensure that rates or premiums associated with the use of a credit report or score are not unfairly discriminatory. While a previous attempt to ban insurance scoring by rulemaking was invalidated by an administrative judge, TransUnion along with CDIA and the Florida Insurance Council are seeking a stay of the enforcement of the rule.

Inquiries

New York Ban on Inquiries in Scoring

With the belief that consumers are adversely affected by comparison shopping for mortgages and auto loans, Assembly Bill 1416 was quietly shepherded through the New York Senate after lying dormant for almost three years. AB 1416, which would prohibit the consideration of inquiries in scoring, would have unintended effects of decreasing predictiveness of scores, and thus increasing risk to businesses, and increasing the cost of mortgages, auto loans and other financial instruments. Governor Elliot Spitzer vetoed the proposed legislation earlier this month.

Puerto Rico Inquiry Resolution Introduced

Some of the same concerns as those in New York, that consumers are adversely affected by shopping for loans because inquiries hurt credit scores, have surfaced in Puerto Rico. A resolution has been introduced in Puerto Rico that would force the Consumer Affairs Commission of the House of Representatives of Puerto Rico to undertake a review of the practice of Credit Bureaus of dropping their score in credit history reports every time a search is made, even if consumers do not end up incurring in the obligation. A hearing is being scheduled for late September.

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